

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHARLES COMBS AND K.J. WOODRUFF	)	
COMPLAINANTS	)	
	)	
VS.	)	CASE NO. 10132
	)	
JESSAMINE COUNTY WATER DISTRICT NO. 1	)	
DEFENDANT	)	

O R D E R

PROCEDURAL BACKGROUND

On January 25, 1988, this Commission, on its own motion, established this case to investigate complaints made by K.J. Woodruff and Charles Combs about the billing practices of Jessamine County Water District No. 1 ("Jessamine County"). Both men had earlier filed informal complaints against Jessamine County which could not be successfully resolved.<sup>1</sup>

In its Order establishing this case, this Commission ordered Jessamine County to answer the allegations contained in the

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<sup>1</sup> The Commission's informal complaint procedures are set out in Commission regulation 807 KAR 5:001, Section 13. Normally the Commission Staff will review informal complaints and correspond "with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing." If the complaint cannot be resolved, the complainant may file a formal complaint or the Commission, on its own motion, may initiate a formal investigation. Mr. Combs and Mr. Woodruff filed their informal complaints with the Commission on February 27 and August 27, 1987, respectively.

complaints. On February 8, 1988, Jessamine County filed its answer, denying all allegations of improper billing practices.

On February 19, 1988, Jessamine County filed a proposed revision to Rule 24 of its tariff. As this rule plays a prominent role in each complaint, the Commission suspended the proposed revision until August 19, 1988.

An evidentiary hearing in this case was held on May 3, 1988. Mr. Woodruff and representatives of Jessamine County were present. Mr. Combs did not appear. Mr. Woodruff and Eleanor Blakeman, office manager of Jessamine County, were the only persons to testify at this hearing.

#### DISCUSSION

##### Introduction

Jessamine County's tariff distinguishes between individually metered units and multiple unit buildings served through a single water meter. An individually metered unit is billed a monthly charge of \$11.85. Although this charge is primarily a fee for the availability of water service, it includes the use of 3,000 gallons of water. If a unit uses in excess of 3,000 gallons, it is billed an additional charge for the excess consumed based on a declining block rate schedule.<sup>2</sup>

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<sup>2</sup> Jessamine County's rates are as follows:

Minimum Monthly Charge (includes first 3,000 gallons)	\$11.85
Next 7,000 gallons per month	2.00 per 1,000 gallons
Over 10,000 gallons per month	1.70 per 1,000 gallons

Multiple unit buildings are billed a monthly minimum charge of \$11.85 per unit. This charge also includes the use of 3,000 gallons of water per unit. If its average unit usage exceeds 3,000 gallons in a monthly billing period, a building is billed an amount equal to the number of its units multiplied by the amount which an individually metered unit would be charged for the average unit usage.

This feature of Jessamine County's tariff is designed to prevent individually metered units from subsidizing the water usage of multiple unit buildings. By assessing each unit a minimum charge, each pays the same amount as an individually metered unit for the availability of water service. By using average unit usage to determine the amount of a bill, the tariff prevents multiple unit buildings from taking advantage of the declining block rates.<sup>3</sup>

As of March 31, 1988, 26 of Jessamine County's 510 customers were multiple unit buildings served through a single water meter. Five of these buildings were used solely for residential purposes. The rest were involved in some commercial activity.

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<sup>3</sup> The following example illustrates this point: An individually metered unit uses 9,000 gallons of water and is billed \$23.85. A multiple unit building with three units uses 27,000 gallons of water and is billed \$71.55. Each unit of the multiple unit building pays the same amount as an individually metered unit for its 9,000 gallons of water. If the multiple unit building is billed in the same manner as an individually metered unit, however, each unit of the building pays only \$18.25 for its 9,000 gallons of water.

Complaint of K.J. Woodruff

K.J. Woodruff owns a warehouse located at 3003 Park Central Avenue in Jessamine County, Kentucky. This warehouse is divided into eight distinct units, but is served through a single water meter. Each unit is approximately 1200 square feet in size and has a toilet and a wash basin. None of the units have any other amenities which require water. The units are rented to commercial businesses. Jessamine County provides water service to the warehouse and bills it as a multiple unit building.

Mr. Woodruff alleges that, inter alia, Jessamine County is improperly billing him for this water service. He contends that Rule 24 of Jessamine County's tariff, which establishes the different billing method for multiple unit buildings served through a single water meter, applies only to residential buildings, not commercial buildings. The rule was designed, he asserts, to deal solely with trailer parks, apartments, and duplexes.<sup>4</sup>

Mr. Woodruff's argument is based wholly on Jessamine County's use of the term "housing unit." Rule 24 states:

Water Service for multiple units and trailer courts shall be determined by the larger of the following: (1) The number of housing units times the minimum water charge per unit based on a 3/4" meter minimum charge, or (2) an amount based upon the actual amount of water used, and this amount shall be determined by figuring the average gallons per housing unit, based upon the actual total gallons used in the development, and applying the existing rate schedule to this average usage to produce an average bill per unit the total bill per unit times the total number of housing units in the development. [Emphasis added]

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• Transcript, p. 10.

A "housing unit," Mr. Woodruff maintains, is a place which provides shelter, lodging, or dwellings for people. As commercial and industrial buildings do not contain such units, Rule 24 is not applicable to them. Counsel for Mr. Woodruff has cited a letter opinion from Commission Staff which supports this interpretation.

Counsel for Mr. Woodruff has also noted that shortly after the Commission initiated its formal investigation, Jessamine County proposed to amend Rule 24 to delete the term "housing." She argues that this act constitutes an admission that Jessamine County "acted beyond the wording [of the tariff] as it presently exists."<sup>5</sup>

In response Jessamine County argues that a "housing unit" is "a separately housed individual, residential, commercial, or industrial unit." It asserts that this definition is fully supported by review of "the four corners of the tariff."<sup>6</sup> As to its proposed amendment of Rule 24, it claims its actions were taken at the suggestion of Commission Staff.

This Commission believes that Mr. Woodruff too narrowly construes the term "housing unit." As the tariff does not define the term, Mr. Woodruff relies on Webster's Dictionary which defines "housing" as:

1. To provide living quarters for; 2. To shelter, keep or store in as if in a house; 3. To serve as a cover or shelter for.

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<sup>5</sup> Transcript, pp. 11-12.

<sup>6</sup> Response of Jessamine County to Commission Order of April 8, 1988.

While commercial buildings can easily fit within the latter two definitions, counsel for Mr. Woodruff argues that the first definition must be used because its position demonstrates that it is the most common meaning of the term.<sup>7</sup> We disagree. The appropriate meaning of the word, we believe, depends upon the context in which it is used.

In this instance, the term "housing unit" is used in a tariff which makes no distinction between residential and commercial buildings. Rule 24 states only that it applies to multiple units. It makes no reference to the use or purpose of a multiple unit building. The terms "commercial" and "residential" are not mentioned. The water district's general rates, in fact, do not distinguish between commercial and residential customers. Given these facts and the intended purpose of Rule 24, we find the term "housing unit" includes commercial structures as well as residential living quarters.<sup>8</sup> Accordingly, we also find that Jessamine County acted properly in billing Mr. Woodruff's building at 3003 Park Central Avenue as a multiple unit building.

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<sup>7</sup> Transcript, p. 93.

<sup>8</sup> In reaching our decision, we have given little weight to the Staff letter opinion or to Jessamine County's alleged admission. Staff has taken inconsistent positions on this issue placing the value of its interpretation into question. Previous to issuing its opinion in support of Mr. Woodruff's position, it had issued a similar letter opinion in support of Jessamine County. See Defendant's Exhibit No. 2 and Woodruff Exhibit No. 1. There is nothing in the record of this case to conflict with Jessamine County's explanation for the proposed revision of Rule 24.

In his informal complaint, Mr. Woodruff has also alleged that Jessamine County failed to inform him about Rule 24 when he applied for service. As a result, he claims that He was unable to "make an informed decision as to whether to purchase several water meters and let each renter pay for his own water directly or purchase one water meter and figure in the minimum charge as an element in setting the amount of rent per unit."<sup>9</sup>

Absent other considerations, a utility has no affirmative duty to inform an applicant for service as to how its rules or regulations will affect a particular situation. Its only duty is to file with this Commission a schedule of its rates and conditions of service and to make this schedule available to the public upon request. KRS 278.160. It is the customer's responsibility to review these rules and regulations to determine their impact.

When Mr. Woodruff applied for water service, he signed a service contract agreeing to abide by the water district's rules without knowing what those rules were. He did not request a copy of those rules or ask to review Jessamine County's office copy. Mr. Woodruff failed to do so despite the fact that the district's rules might affect the design and construction of his building.<sup>10</sup>

Admittedly, Mr. Woodruff did make a limited inquiry about Jessamine County's rules when applying for service. He asked "if

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<sup>9</sup> Letter of Linda Covington (counsel for R.J. Woodruff) to Howard Downing (counsel for Jessamine County), June 5, 1987.

<sup>10</sup> Mr. Woodruff conceded this point under cross-examination. Transcript, pp. 43-46, 53-55.

there was anything I needed to know."<sup>11</sup> Nothing in his testimony indicates that he informed any Jessamine County employee at that time that his building was a multiple unit building or that he intended to rent those units. According to her testimony, Ms. Blakeman specifically asked Mr. Woodruff if he intended to use the building for his personal use. He replied that he did. Based on that answer, she saw no need to inform him about Rule 24.<sup>12</sup>

Given these facts, this Commission does not believe that Jessamine County acted improperly.

#### Complaint of Charles Combs

Charles Combs owns three office/warehouse buildings in the Bluegrass Industrial Park in Jessamine County, Kentucky. Each building is divided into distinct units, but is served through a single water meter. Each unit primarily serves as a warehouse, but has some office space. All units have a toilet and wash basin. One unit has two icemaking machines.

In his complaint, Mr. Combs questioned Jessamine County's method for determining the number of units in a multiple unit building for billing purposes. He claims that Jessamine County includes unoccupied units in its count of units for billing. He argues that only occupied units should be considered.

Although Rule 24 of Jessamine County's tariff does not address this issue, the theory behind it supports Mr. Combs' argument. Rule 24 is intended to prevent individually metered

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<sup>11</sup> Transcript, p. 14.

<sup>12</sup> Transcript, p. 57.



units from subsidizing the water usage of multiple unit buildings. For this reason, each unit in a multiple unit building is assessed a minimum charge for the availability of water service. Unlike service to an individually metered unit, service to an unoccupied unit of a multiple unit building served through a single meter cannot be discontinued without discontinuing service to the other units in the building. To continue assessing a charge for an unoccupied unit where no means to discontinue service to it exists, this Commission believes, is unfair.

Jessamine County apparently agrees. In her testimony, Ms. Blakeman stated that Jessamine County does not consider unoccupied units when calculating its customer billings.<sup>13</sup> She further testified that customer accounts are usually adjusted when customers report being billed for unoccupied units. In Mr. Combs' case, she stated, adjustments for unoccupied units had frequently been made, but ceased when Jessamine County learned from a former employee of Mr. Combs that false reports were being made.<sup>14</sup>

Ms. Blakeman's testimony strongly suggests that Jessamine County is currently unable to accurately determine the number of units for which it should bill. It does not make any inquiries of building owners as to the number of units in their buildings nor does its application for service request this information. It does not request a copy of a building's floor plan so as to

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<sup>13</sup> Transcript, p. 71.

<sup>14</sup> Transcript, pp. 75-76.

discern if individual units are capable of receiving water service. It currently determines the number of units by a count of the signs in front of a commercial building or of its electric meters.<sup>15</sup> The ultimate burden of keeping an accurate account of the number of occupied units falls on its customers who must review their bills and report any errors.

This Commission believes that the burden to insure an accurate account of the number of occupied units is best placed upon the building owner. Whereas, Jessamine County lacks the resources to maintain an accurate account of a building's occupancies, the building's owner can report the number of occupied units to it with relative ease.

For a customer to insure that the water district properly bills him, however, he must be aware of the number of units for which he is being billed and his right to report changes in the number of units. Jessamine County's customer billings do not state the number of units for which a multiple unit building is being billed<sup>16</sup> nor does Jessamine County publicize a customer's right to report changes and billing errors.

This Commission is of the opinion that Jessamine County should take immediate steps to remedy this situation. Billings to

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<sup>15</sup> Transcript, pp. 70-72, 86.

<sup>16</sup> When asked why Jessamine County does not indicate the number of units for which a multiple unit building is being billed, Ms. Blakeman responded: "I suppose we just haven't thought of it." Transcript, p. 77.

multiple unit buildings should indicate the number of units for which a customer is being billed. Efforts should be made to inform its customers of their right to report changes in building occupancy. Under the existing circumstances, the potential for overbilling customers is very great. In light of the number of complaints which Jessamine County has received and the small number of customers involved, such action should have been taken long ago. This failure to act reflects very poorly on Jessamine County.

#### FINDINGS AND ORDERS

The Commission, having reviewed the evidence of record and being advised, is of the opinion and finds that:

1. Rule 24 of Jessamine County's tariff applies to residential and commercial buildings. Jessamine County acted properly in billing Mr. Woodruff's warehouse, located at 3003 Park Central Avenue, Jessamine County, Kentucky, in accordance with Rule 24 of its tariff.

2. The evidence fails to support the allegations contained in Mr. Woodruff's informal complaint.

3. Jessamine County's tariff does not permit it to consider unoccupied units in determining the number of units within a multiple unit building for billing purposes.

4. Jessamine County should indicate on its billings to multiple units the number of units for which a customer is being billed. It should further take steps to inform those customers billed for multiple unit buildings of their right to report changes in the member occupied units.

5. The proposed amendment of Rule 24 should be approved.

IT IS THEREFORE ORDERED that:

1. Jessamine County shall indicate on its billings to multiple unit customers the number of units for which they are being billed.

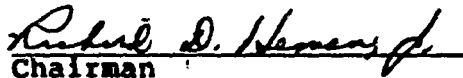
2. Jessamine County shall take all practical steps to inform multiple unit customers of their right to report changes in the number of occupied units. It shall file a written report with this Commission within 30 days of the date of this Order stating the actions which it intends to take and has already taken.

3. The proposed amendment of Rule 24 be, and it hereby is, approved.

4. The Commission's investigation into the informal complaints of K.J. Woodruff and Charles Combs be, and it hereby is, closed.

Done at Frankfort, Kentucky, this 22nd day of August, 1988.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Executive Director